

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

1. The Department initiated a project to verify the validity of the tax exemption for vehicles which have been purchased free from Illinois Use Tax in accordance with the Rolling Stock Exemption contained in the Retailers' Occupation Tax Act and codified at 86 Illinois Administrative Code, Sect. 130.340. Department records indicated that the taxpayer purchased two vehicles on September 27, 1989, namely, a 1989 Ford truck,

and a 1989 GMC truck. The retailers submitted the transaction reporting returns (ST-556) and a RUT-7 Rolling Stock Affidavit. (Dept. Gr. Ex. No. 5).

2. The Department obtained information that the trucks were transporting loads of live turkey in weights of up to 44,000 pounds to the use of the two pickup trucks. The Department assessed Use Tax on the trucks, finding that such a use was not feasible. (Dept. Gr. Ex. No. 5; Tr. at pp. 10, and 21).

3. After reviewing taxpayer Exhibit No. 5 (pictures of the truck) and reviewing taxpayer's testimony (Tr. at p. 10) it is a finding of fact that the 44,000 pounds of turkeys that were carried were not done so by the trucks under assessment. By the taxpayer's own admission, the vehicles were used in loading. (Tr. at p. 10).

4. The taxpayer admitted taxpayer Group Exhibit No. 1 which were bills of lading referring to bills of loading and transportation from departures in Indiana to a destination at XXXXX, Illinois. (Tr. at p. 20). The trucks were used to transport the turkey loader (Tr. at p. 15) and the truck ran the hydraulic system on the turkey loader (Tr. at p. 16). Specifically the trucks towed the turkey haulers. The loaders unload the turkeys from transport trailers. Thus, the trucks are not transportation vehicles engaged in interstate commerce as contemplated under the rolling stock exemption.

CONCLUSIONS OF LAW On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that XXXXX is not qualified for the rolling stock exemption on the subject two vehicles must stand as a

matter of law. In support thereof the following conclusions are made:

At 86 Illinois Administrative Code Sect. 130.340 at subsection (b) it states:

"The term "Rolling Stock" includes the transportation vehicles of any kind of interstate transportation company for hire.... but not vehicles which are being used by a person to transport its officers, employees, customers or others not for hire.... or to transport property which such person owns..." (86 Ill. Adm. Code 130.340 (b) emphasis added).

In *LeTourneau Railroad Services, Inc. v. The Department of Revenue*, 134 Ill. App. 3d 638 (4th Dist. 1985) the court held that a self propelled machine which is operated from a cab located on a vehicle, used primarily to load and unload containerized freight from railcars did not qualify for the rolling stock exemption. IL at 640. The court turned its decision on the fact that the principal function of the machine was loading and unloading freight.

Similarly, in the instant matter the vehicles find their primary function in enabling loading of the turkeys which were ultimately the "freight" which would be transported from one geographic area to another.

RECOMMENDATION It is my recommendation that Notice of Tax Liability No. XXXXX be finalized in its entirety.

William J. Hogan
Administrative Law Judge